IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Second Appeal No.956 of 2006

With

Civil Application No.1569 of 2006

Nandkishor Nilkanth Manjrekar
and ors. Appellants

Vs.

Shri Vishwanath Ladu Manjrekar
and ors. Respondents

Mr.A.G.Kundekar for appellants.

Mr.G.H.Keluskar for resp.nos.1 to 3.

CORAM: B.H.MARLAPALLE, J.

April 09, 2007.

P.C.

1. This Second Appeal filed by the original defendants arises from the judgment and decree passed in Regular Civil Suit No.135 of 1995 and confirmed in Regular Civil Appeal No.89 of 2004.

2. The suit was filed for permanent injunction to

restrain the defendants from disturbing and obstructing the peaceful possession and enjoyment of the plaintiffs over the suit properties at village Satarde, Tal. Sawantwadi and the suit property was an agricultural land as described in para 1 of the plaint. The lands were in 13 different patches and they were owned originally by Shri Pundalik Govind Manjarekar who died leaving behind his four sons Ladu, Vasudeo, Hari and Nilkanth. The plaintiffs represented the branch of Ladu whereas the defendants represented the branches of Nilkanth and Hari. The trial Court considered the pleadings of the respective parties and the documents like 7/12 extracts at Exhibits 7 to 19 and 128 to 145, order in Regular Tenancy Appeal No.158 of 1994 and 46/97-98 at Exhibits 123 and 124 respectively, rent receipts at Exhibit Nos.149 to 152, extracts of Mutation entry No.1962 and 5865 at Exhibits 146 and 147, the certificate issued under Section 32M of the Bombay Tenancy Act at Exhibit 148 and extract of Mutation entry No.5530 at Exhibit 154. Vishwanath Ladu Manjarekar was examined as PW 1 at Exhibit 149 whereas the defendants examined Dnyaneshwar Nilkanth Manjarekar - DW 1, Pundalik Hari Manjarekar - DW 2 and Jayawant Hari Manjarekar - DW 3 as well as

Chandrakant Tato Shirodkar - DW 4 and Vyankatesh Manjarekar - DW 5. They also further produced the certified copy of Exhibit 1 in RCS No.22 of 1999 at Exhibit 160, certified copy of written statement filed by defendant nos.5 to 8 vide Exhibit 23 in RCS No.22 of 1999 at Exhibit 161, additional rent receipts at Exhibits 165 to 169, revenue record at Exhibits 170 to 172, notice to pay purchase price at Exhibit 173, affidavit under Section 48 at Exhibit 174, receipts at Exhibits 175 to 181 and the order in Tenancy Case at Exhibit 182. The plaintiffs had also filed 7/12 extracts at Exhibits 190 to 197 and extract of Mutation entry No.898 at Exhibit 198.

3. On the basis of the mutation entry no.4406 it was the case of the defendants that the suit properties were entered in their names and, therefore, the plaintiffs could not ask for an injunction. This mutation entry was challenged by the plaintiffs in RTS Appeal No.158 of 1994. The said appeal was allowed as per the order filed at Exhibit 123 and the defendants had filed further appeal against the said order. However, the defendants' appeal was dismissed and the order passed by the trial Court was confirmed at Exhibit 124.

Consequently by Mutation Entry No.5865 filed at Exhibit 147, the earlier Mutation Entry No.4406 was set aside and the name of Nilkanth Pundalik Manjarekar was deleted. This order reached its finality. On the demise of Ladu on 13/4/1988 the heirship entry was effected in the name of plaintiffs (Mutation entry No.5530 at Exh. 154). The defendants had relied upon the rent receipts at Exhibits 165 to 169 and the notice to pay purchase price at Exhibit 173 as well as receipts at Exhibits 175 and 176. These documents pertained to the years 1950, 1951 and 1952 and it must be noted that the Mutation Entry No.4406 was certified on 22/4/1980 and prior to that the affidavit filed at Exhibit 174 indicated that the suit property was mortgaged jointly on 8/2/1975. All this documentary evidence was of no support to the defendants when the Mutation Entry No.4406 was set aside in RTS appeal and the order was confirmed in further appeal. Thus the case of the defendants to claim joint ownership could not remain any further.

4. In addition the statutory ownership certificate issued under Section 32M of the Bombay Tenancy Act was in the name of Ladu at least in

respect of part of the suit land. The trial Court, therefore, held that the plaintiffs established their lawful possession over the suit land and the defendants could not prove the joint possession as well as joint ownership over the suit land. Consequently the plaintiffs were held to be entitled for the order of injunction.

5. The lower Appellate Court re-appreciated the evidence placed before the trial Court and again by referring to the order passed in RTS Appeal No.198/94 decided on 17/12/1995 it held that the said order had become final and the case of the defendants claiming joint ownership as well as possession over the suit land had come to an end. It further agreed with the findings of the trial Court that the suit land was acquired by Ladu as tenant and subsequently he became a deemed purchaser and the suit being for injunction, the factum of possession having been proved and the allegation of joint possession / ownership having been disproved, the trial Court rightly granted the order of perpetual injunction, noted the lower Appellate Court. It also referred to the order dated 24/12/1999 wherein the order passed by the Collector was confirmed. Consequently Mutation Entry No.5865

in the exclusive name of the plaintiffs had reached its finality. The suit land was in three different locations i.e. Survey No.50 which was named as "Tolbag" or "Tolambag", Survey No.38 which was known as "Poie Bharan" and Survey No.47 known as "Modeshwarache kate" or "Monache Padayal". The 7/12 extracts at Exhibits 7 to 9 contained the name of Nilkanth Pundalik Manjrekar to the extent of 4 Annas as per the mutation entry no.4406 and this mutation entry was set aside and consequently the 7/12 extracts at Exh. 128 to 140 had the exclusive name of Ladu Pundalik Manjarekar. In addition the proceedings initiated under Section 32G of the Bombay Tenancy Act in respect of Survey No.40/2 were concluded in favour of Ladu who became the deemed purchaser of the suit land (Exh. 147).

6. In view of these concurrent findings of fact recorded by the trial Court and confirmed by the lower Appellate Court, no substantial question of law arises for consideration in this Second Appeal and, therefore, the same must fail at the threshold. The Second Appeal is dismissed in limine.

7. Civil Application No.1569 of 2006 does not

survive and the same stands rejected. Ad-interim order, if any stands vacated.

(B.H.MARL